

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOE HAND PROMOTIONS, INC.,

Plaintiff,

v.

SONNY SHAIKH, Individually, and as officer,
director, shareholder and/or principal of CAFÉ
ISTANBUL INC., and CAFÉ ISTANBUL INC.,

Defendants.

ORDER

19-CV-03500 (MKB) (RLM)

MARGO K. BRODIE, United States District Judge:

Plaintiff Joe Hand Promotions, Inc. commenced the above-captioned action on June 13, 2019, against Defendants Sonny Shaikh and Café Istanbul Inc., asserting claims under the Communications Act of 1934, 47 U.S.C. §§ 553 and 605, and the Copyright Act, 17 U.S.C. § 101 *et seq.* (Compl., Docket Entry No. 1.) Plaintiff sought and obtained an entry of default against Defendants, (Req. for Certificate of Default, Docket Entry No. 13; Clerk’s Entry of Default, Docket Entry No. 14), and subsequently moved for a default judgment, requesting damages in the amount of \$75,000, plus litigation costs, including attorney fees, and post-judgment interest, (Pl. Mot. for Default J., Docket Entry No. 15). On November 20, 2019, the Court referred Plaintiff’s motion to Magistrate Judge Roanne L. Mann for a report and recommendation. (Order dated Nov. 20, 2019.) By Order dated February 18, 2020, Judge Mann noted “a number of deficiencies” with Plaintiff’s motion and directed Plaintiff to submit any supplemental submissions addressing the noted deficiencies by February 25, 2020. (Order dated Feb. 18, 2020.) Plaintiff timely filed its supplemental submissions. (Letter dated Feb. 20, 2020, Docket Entry No. 19; Resp. to Order to Show Cause, Docket Entry No. 20.)

By report and recommendation dated March 4, 2020, Judge Mann recommended that the Court grant in part and deny in part Plaintiff's motion (the "R&R"). (R&R, Docket Entry No. 21.) As to Plaintiff's claims against Istanbul Café Inc., Judge Mann recommended that the Court award Plaintiff damages in the amount of \$2950 — \$1450 for its Communications Act claims and \$1500 for its Copyright Act claim — plus \$837 in attorney fees, \$400 in litigation costs, and post-judgment interest. (*Id.* at 2, 24.) As to Plaintiff's claims against Shaikh, Judge Mann found that Plaintiff had failed to meet its "burden to establish Shaikh's contributory infringement or vicarious liability," and recommended that the Court dismiss the claims against him with prejudice. (*Id.* at 14, 24.) No party has objected to the R&R and the time for doing so has passed.

A district court reviewing a magistrate judge's recommended ruling "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "Where parties receive clear notice of the consequences, failure to timely object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision." *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P&C Food Markets, Inc.*, 313 F. 3d 758, 766 (2d Cir. 2002) (citing *Small v. Sec'y of Health & Human Servs.*, 892 F. 2d 15, 16 (2d Cir. 1989) (per curiam))); *see also Sepe v. N.Y. State Ins. Fund*, 466 F. App'x 49, 50 (2d Cir. 2012) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); *see also Almonte v. Suffolk Cty.*, 531 F. App'x 107, 109 (2d Cir. 2013) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point." (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) ("[A] party waives appellate

review of a decision in a magistrate judge's [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue." (citations omitted)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R pursuant to 28 U.S.C. § 636(b)(1). Accordingly, the Court grants in part Plaintiff's motion for default judgment as to Istanbul Café Inc., and awards Plaintiff damages and costs in the amount of \$4187, plus any post-judgment interest. This judgment is comprised of \$2200 in statutory damages, \$750 in enhanced damages, \$837 in attorney fees, and \$400 in costs. The Court denies Plaintiff's motion for default judgment as to Shaikh, and dismisses all claims against Shaikh with prejudice. The Court directs Plaintiff to serve copies of this Order on Defendants and file proof of service.

Dated: April 15, 2020
Brooklyn, New York

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge